

Message Text

LIMITED OFFICIAL USE

PAGE 01 GENEVA 07182 101907Z

ACTION EB-08

INFO OCT-01 IO-13 ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 COME-00 DLOS-09 DODE-00

DOTE-00 EPA-01 SOE-02 DOE-15 FMC-01 TRSE-00 H-01

INR-10 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-07 OMB-01 PA-01 PM-05 SP-02 SS-15 ICA-11

AF-10 ARA-10 EA-10 EUR-12 NEA-11 /189 W

-----062627 101912Z /72

P 101845Z MAY 78

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 9479

LIMITED OFFICIAL USE GENEVA 07182

DEPARTMENT PASS COPY TO RICHARD A. FRANK, NOAA AND
CHARLES EDDY, DEPT OF INTERIOR

E.O. 11652: N/A

TAGS: PLOS

SUBJECT: LOS - TRANSFER OF TECHNOLOGY

REF: STATE 115413

1. BEST REFERENCE POINT ON ISSUE OF TECHNOLOGY TRANSFER
BY DEEPSEA MINING CONTRACTORS IS FORMULA PROPOSED BY
NJENGA ON 2 MAY. IN ESSENCE PROPOSED CHANGES (A) REQUIRE
CONTRACTOR TO GIVE AUTHORITY GENERAL DESCRIPTION OF
TECHNOLOGY USED ON A CONTINUING BASIS; (B) AFTER CONCLU-
SIN OF MINING CONTRACT, REQUIRE CONTRACTOR TO NEGOTIATE A
SUPPLEMENTARY AGREEMENT MAKING TECHNOLOGY AVAILABLE TO
THE ENTERPRISE ON COMMERCIAL TERMS; (C) REQUIRE CONTRACTOR
TO OBTAIN FROM THIRD PARTIES SELLING TECHNOLOGY TO CONTRAC-
TOR ASSURANCES THAT THEY WOULD ALSO BE WILLING TO SELL TO
AUTHORITY ON COMMERCIAL TERMS; (D) REQUIRE CONTRACTOR TO
FACILITATE THE SALES DESCRIBED IN (C) ABOVE; AND (E)

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 GENEVA 07182 101907Z

REQUIRE THE SAME OBLIGATIONS WITH RESPECT TO A DEVELOPING
COUNTRY WHICH IS AUTHORIZED TO EXPLOIT THE CORRESPONDING
RESERVED SITE BANKED BY THE CONTRACTOR PROVIDED THAT TECH-
NOLOGY TRANSFER TO THE DEVELOPING COUNTRY IS FOR THE
PURPOSE OF EXPLOITING THAT SITE ONLY AND THAT THE TRANSFER
WOULD NOT INVOLVE TRANSFER TO ANY DEVELOPED COUNTRY NATION-
ALS. CONCILIATION, AND IF NECESSARY BINDING ARBITRATION ON

QUESTION WHETHER CONTRACTOR'S UNDERTAKINGS HAVE BEEN FULFILLED, ARE REQUIRED IF NO AGREEMENT IS REACHED ON TERMS AND CONDITIONS. US INTENDS TO STATE THAT (E) ABOVE IS UNNECESSARY, OBJECTIONABLE, AND WOULD IMPERIL TECHNOLOGY TRANSFER FOR THE BENEFIT OF THE AUTHORITY. US ALSO WILL EXPRESS RESERVATIONS CONCERNING (C) AND TO COMPULSORY ARBITRATION, BUT BELIEVES THAT THESE MIGHT BE ACCEPTED IN FUTURE AS PART OF COMPROMISE PACKAGE.

2. IN ANSWER TO YOUR SPECIFIC QUESTIONS: (1) US AND EC HAVE INDICATED THEY WOULD ACCEPT CONCILIATION OF TERMS AND CONDITIONS AND BINDING ARBITRATION OF ISSUE OF GOOD FAITH NEGOTIATION, BUT NOT BINDING ARBITRATION OF TERMS AND CONDITIONS. (2) WE CONCUR THAT BOTH PROCEDURES DESCRIBED IN (1) ARE LIKELY TO RESULT IN PRESSURE ON CONTRACTOR TO ACCEPT TERMS AND CONDITIONS AT LEAST WITHIN A STATED RANGE. ONCE PRINCIPLE OF OBLIGATORY NEGOTIATION OF COMMERCIAL TERMS IS CONCEDED, IT IS DIFFICULT TO RESIST ARGUMENT THAT SOME METHOD OF RESOLVING DISPUTES MUST BE AUTHORIZED OR WHOLE PROVISION IS MEANINGLESS. WHETHER CONTRACTOR'S OFFERS ARE REASONABLE COMMERCIAL OFFERS IS A KEY ISSUE IN DETERMINING WHETHER HE HAS FULFILLED HIS OBLIGATION. ONE ADVANTAGE AT LEAST OF DISPUTE SETTLEMENT IS MINIMIZING POSSIBILITY OF RETALIATION. (3) WE BELIEVE COMMENTS ABOVE STATE THE US POSITION. NO SPECIAL SIGNIFICANCE MAY BE ASCRIBED TO THE REFERENCED PARAGRAPH. (4)(A) ONLY RIGHTS TO USE TECHNOLOGY IN DEEPSEA MINING WOULD BE COVERED LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 GENEVA 07182 101907Z

BY TRANSFER OBLIGATIONS DESCRIBED ABOVE. (4)(B) MINER WOULD, INTER ALIA, FURNISH AUTHORITY WITH LISTS OF SOURCES AND PRICES, AND PERHAPS REMIND THIRD PARTIES OF OBLIGATION THEY HAVE ASSUMED. (4)(C) NJENGA DRAFT PROVIDES MONETARY DAMAGES FOR FAILURE TO COMPLY WITH ARBITRATION AWARE AND US INTERPRETS THIS TO EXCLUDE POSSIBILITY OF TERMINATION FOR SUCH FAILURE. PARAGRAPH 12 OF ANNEX II GIVES AUTHORITY POSSIBILITY OF TERMINATION FOR OTHER VIOLATIONS IN EXTREME CASES.

3. GENERAL FEELING OF US DELEGATION IS THAT REASONABLE ASSURANCE THAT ENTERPRISE WILL BE ABLE TO BUY TECHNOLOGY ON LIMITED BASIS IS MINIMUM CONDITION FOR ACCEPTABLE COMMITTEE ONE COMPROMISE. G-77 HAVE DEEPLY ROOTED CONVICTION THAT DEVELOPED COUNTRY CONSORTIA WILL REFUSE TO SELL TECHNOLOGY OR TO GIVE ASSISTANCE TO ENTERPRISE IN ABSENCE OF SUCH REQUIREMENT. RICHARDSON

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, MINING, OFFSHORE DRILLING, TECHNOLOGICAL EXCHANGES, CONTRACTS, MEETING REPORTS
Control Number: n/a
Copy: SINGLE
Draft Date: 10 may 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA07182
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780198-1228
Format: TEL
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780575/aaaacpls.tel
Line Count: 111
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: b7efb0a1-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 STATE 115413
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2739295
Secure: OPEN
Status: NATIVE
Subject: LOS - TRANSFER OF TECHNOLOGY
TAGS: PLOS, EMIN
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/b7efb0a1-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014